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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/552,222	09/25/2006	Theophil Markus Lutz	930024-2031	6514
7590 Frommer Lawrence & Haug 745 Fifth Avenue New York, NY 10151			EXAMINER GREEN, ANTHONY J	
			ART UNIT	PAPER NUMBER
			1793	
			MAIL DATE	DELIVERY MODE
			06/29/2009	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/552,222

**Applicant(s)**

LUTZ ET AL.

**Examiner**

Anthony J. Green

**Art Unit**

1793

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 June 2009 and 19 June 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 14-16 and 18-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 14-16, 18-21, 25 and 26 is/are allowed.
- 6) ☒ Claim(s) 22-24 and 27 is/are rejected.
- 7) ☒ Claim(s) 27 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 October 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Final Drawing Review (PTO-849)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submissions filed on 17 June 2009 and 19 June 2009 have been entered.

### ***Response to Amendment***

2. The declaration under 37 CFR 1.132 filed 19 June 2009 is sufficient to overcome the 103(a) obviousness rejection of claims 14-16 and 18-27 based upon Lane et al (US Patent No. 2005/0258401) alone and in view of Ray (US Patent No. 4,09,614 A).

### ***Claim Objections***

3. Claim 27 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim, or amend the claim to place the claim in proper dependent form.

It is not seen as to how this claim further limits claim 22 as the limitation of "intended to solidify and immobilize steel rebars thereby forming a structure comprising said rebars and a solidified cement based product" recited in claim 22 is an intended

use limitation and therefore it is not seen as to how claim 27 further limits said intended use.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 22-24 are rejected under 35 U.S.C. 102(b) as being anticipated by Ray (US Patent No. 4,098,614 A).

Ray teaches the use of alkali and alkaline earth metal glycerophosphates in cement compositions. See column 3, lines 46+ which teaches the use of lithium glycerophosphate. Column 4, lines 20+, teaches that it may be added to the cement composition by adding it to a portion of the mix water which is used for mixing the cement composition. The amount which may be added is an amount of up to 0.2% and preferably about 0.005% to 0.2% by weight.

It should be noted that the limitation of "intended to solidify and immobilize steel rebars thereby forming a structure comprising said rebars and a solidified cement based product" is an intended use limitation and as such, it adds little or no patentable weight to the claim. Patentability does not depend upon intended use (Ex parte Wikdahl 10 USPQ2d 1546). Therefore the claim is interpreted to be a process of adding lithium

glycerophosphate to a not-yet solidified cement based paste and this is clearly taught by the reference.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ray (US Patent No. 4,098,614 A) in view of Lane et al (US Patent No. 2005/0258401 A1).

The Ray reference was discussed previously.

Lane et al teaches that it is known to utilize di-sodium- beta glycerophosphate as corrosion inhibitors in cement compositions having metallic reinforcements present.

The instant claim is obvious over the combination on references. While the primary reference does not recite that glycerophosphate is added to cement compositions which comprise metallic reinforcements, the secondary reference teaches that it is well known to utilize other alkali metal glycerophosphates in cement compositions which contain glycerophosphates as a corrosion inhibitor and therefore it would have been obvious to utilize the lithium glycerophosphate of the reference in cement compositions that are utilized to produce metal reinforcement cement structures because "a person of ordinary skill has good reason to pursue the known options with his or her technical grasp. If this leads to the anticipated success, it is likely the product

not of innovation but of ordinary skill and common sense.” Further the claim would have been obvious because a particular known technique was recognized as part of the ordinary capabilities of one skilled in the art. Accordingly the instant claim is obvious over the reference.

***Allowable Subject Matter***

8. Claims 14-16, 18-21 and 25-26 are allowed.
9. The following is a statement of reasons for the indication of allowable subject matter: The 1.132 declaration clearly shows that the use of lithium glycerophosphate as compared to sodium glycerophosphate produces unexpected results. That is, that lithium glycerophosphate has much greater penetrability into concrete than sodium glycerophosphate.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony J. Green whose telephone number is (571)272-1367. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jerry A. Lorengo can be reached on 571-272-1233. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

**/Anthony J Green/  
Primary Examiner  
Art Unit 1793**

ajg  
June 24, 2009